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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

.....X

PATRICK F. D'CUNHA

Plaintiff

Civil Action No.
02-CV-4157(CRW)(LB)

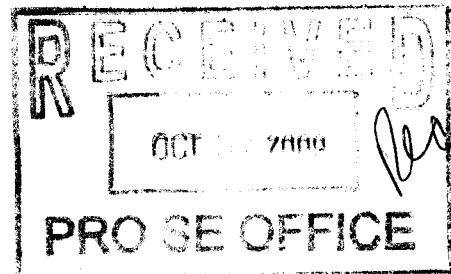
v.

**ECKERD CORPORATION and its parent
Companies: Brooks Eckerd drugstore chain,
J.C. Penny, JCG(PJC) USA, LLC("Jean Coutu
USA"), Jean Coutu Group (PJC) Inc. and
RITE AID CORPORATION (publicly held
corporations),**

Defendants,

.....X

**Plaintiff's Affirmation
in Support of
Motion for Protective Order**



I, Patrick F. D'Cunha, make the following **affirmation under penalties of perjury**:

1. I am the Plaintiff Pro-Se in the above captioned case and I am fully familiar with the facts and circumstances contained herein and I submit this affirmation in support of my motion for Protective Order.
2. I filed this suit in July 2002, claiming age discrimination by Eckerd, under ADEA.
3. Specifically Eckerd rejected me because of my age on two occasions, Aug. 2001 and Feb. 2002, despite my qualifications for an entry level Pharmacist Job.
4. After Eckerd was granted summary judgment by this court, I appealed and the Second Circuit Court of Appeals Reversed and Remanded the case stating, "there remain genuine issues of material fact as to whether the reasons given for not hiring D'Cunha were pretextual such that a jury could reasonably find that D'Cunha suffered an adverse employment action because of his age."
5. In July 2008, Mr. Bucci, attorney for Defendant informed me through a letter that,

"since the Initial Disclosures in 2002, Eckerd Corporation and its related entities have undergone changes in their corporate structures. Most recently, in August of 2006, Rite Aid Corporation ("Rite Aid") entered into a Stock Purchase Agreement with The Jean Coutu Group (PJC), Inc., and the transition closed on June 4, 2007. As a result of this transaction, Rite Aid ultimately acquired the assets and liabilities of Genovese Drug

Stores, Inc., and Eckerd Corporation.”

7 In my MOL in opposition to Defendant’s Motion for Summary Judgment, I had asserted New York Law claim, that arises from same nucleus of operative facts, as the ADEA.

8 In 2007, Second Circuit Court of Appeals Vacated the decision of this district court and Remanded with instructions to deny Eckerd’s motion for summary judgment.

9) This court granted plaintiff’s motion to amend Complaint on August 10, 2009.

For reasons set forth in the accompanying Memorandum of Law, I, Plaintiff D’Cunha requests this Honorable Court to grant Plaintiff’s motion for Protective Order for the following reasons:

The Defendants failed to depose Plaintiff’s treating Physician and Plaintiff’s wife and three daughters, Olivia, Crystal and Stacy, despite court’s permission to do so in 2007. Now defendant’s attempt to depose plaintiff for a third time and his wife for a second time, as well as deposition of his treating physician Dr. Arora and psychiatric exam of plaintiff should be denied as defendant has abused discovery process to harass plaintiff and by knowingly ignoring / setting aside an opportunity given by this court to do these things in 2007.

10 A true and correct copy of Plaintiff’s Responses to First Set of Interrogatories of Defendants addressed to Plaintiff is attached as Exh. “A”

11 A true and correct copy of a docket sheet for this case is attached as Exh. “B”

12 A true and correct copy of 10/10/2007 email response of Mr. Bucci is attached as Exh. “C”

13 A true and correct copy of Plaintiff D’Cunha’s 2007 Deposition is attached as Exh. “D.”

14 A true and correct copy of Eckerd’s attorney Mr. Bucci’s 12/12/2007 letter to Honorable Bloom is attached as Exh. “E”

15 A true and correct copy of Eckerd’s attorney Mr. Bucci’s 10/01/2009 letter to Plaintiff is attached as Exh. “F”

Wherefore, I respectfully request this Honorable court to grant plaintiff’s motion for Protective Order, as well as such other and further relief that may be just and proper.

Queens, NY,
Dated 10/07/2009.

Respectfully submitted,

Patrick F. D'Cunha

PATRICK F. D’CUNHA, Plaintiff Pro-Se
137-22 LABURNUM AVENUE
FLUSHING, NY 11355

Tel. (718) 661-2979

Email: dragondcunha@aol.com

ORIGINAL

Exh. A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PATRICK F. D'CUNHA

Plaintiff

02-CV-4157 (FB)(LB)

v.

GENOVESE/ECKERD CORPORATION

Defendants

Plaintiff's Response to :

FIRST SET OF
INTERROGATORIES OF
DEFENDANTS ADDRESSED
TO PLAINTIFF

I. Plaintiff acknowledges the 12 points of definitions and instructions set forth by the counsel for the Defendant.

II. INTERROGATORIES

1. Plaintiff's wife Agnes D'Cunha who knows and has lived with the Plaintiff what he went through from August 2001 to present, especially the agony and pain, the plaintiff went through. The people directly involved with the subject matter, including but not limited to the following :

Ms. Jennifer Dolan, Mr. James Tran, Mr. John Bowls, a senior District supervisor from New Jersey, Mr. George Kowaski also Supervisor in New Jersey and another District Supervisor in charge of Sussex, NJ area.

Each of these persons mentioned above has important information regarding the subject matter of this lawsuit, especially in what they said and did during their encounters with the Plaintiff directly, over the phone and or through their acts of commission or omission with regard to this subject matter. Especially important : the 45 minutes Interview of Plaintiff by Ms. Dolan, letter of Plaintiff to Ms. Dolan, Video of the Interview with Mr. Tran (and also of the meeting at Waldwick, NJ), records of all the phone conversations of each of these persons with the Plaintiff and among themselves on and immediately after the date of the interview ; as also immediately before and after the Waldwick, New Jersey meeting.

2. I assert Privilege, because I have a right to seek Legal assistance, a right to an attorney and my attempts to do so or any of my contacts with potential Attorneys is a Privileged matter.

3. I did suffer emotional and mental harm, leading to loss of enjoyment of normal life. The

Plaintiff's Exhibit 24-1

details of the nature of such damages can only be given after a complete assessment by a qualified professional such as a psychiatrist, psychologist, counselor or a therapist; one or more of these. Hence, responses for numbers A through D will be provided as soon as they are available. Numbers E and F need to be clear and specific.

4. I prefer that the monetary value of each element of the relief be determined by the members of the Jury. In the light of this position, numbers C through E are irrelevant.

5. After I was unjustly denied a job by Mr. Tran in August 2001, I nearly gave up on the system, gave up looking for Job as a Pharmacist because I saw absolutely no reason why I should have been denied a job as a Pharmacist for which I was well qualified. I nearly gave up on life itself. Life seemed to have lost its meaning for me, hence I did not anymore want to look for a job, I became kind of an Introvert Person. I started business Partnership with another person from May 31, 2002. Details of this partnership business I can not provide as it would violate the rights of my partner and the rights of the business entity. Hence I assert Privilege. A through G have no relevant answers.

6. Please refer to the answer in # 5.

B & C - I assert Privilege.

D Will be made available as soon as properly identified.

E No relevant answer.

7. NO.

8. No final decision has been taken with regard to this matter as yet.

9. Will be made available when a final decision is taken in this regard.

10. Several Legal reference books from the Library, legal reference charts, and following books: a) Federal Employment Laws by Amy DelPo & Lisa Guerin, b) Employment Law by V.H. Goldstein, J.D. c) Cases and Materials on Employment Discrimination by M. J. Zimmer, C.A. Sullivan, R.F. Richards & D.A. Calloway, and other books.

If any of the information provided is a matter of Privilege, then the Consul for the Defendants is advised not to use that information, as that would violate the rights of the Plaintiff. Furthermore, the Plaintiff reserves the right to supplement these responses as additional relevant material becomes available.

I have answered these Interrogatories under oath.

*Dated: New York, NY
December 9, 2002.*

24.2

Patrick F. D'Cunha.
PATRICK F. D'CUNHA
137-22 LABURNUM AVENUE
FLUSHING, NY 11355
(718) 661 2979

Exh. B

**U.S. District Court
Eastern District of New York (Brooklyn)
CIVIL DOCKET FOR CASE #: 1:02-cv-04157-CRW-LB
Internal Use Only**

D'Cunha v. Genovese/Eckerd Corporation (FB)
Assigned to: Visiting Judge VJ, Charles R. Wolle
Referred to: Magistrate Judge Lois Bloom
Demand: \$0
Cause: 29:621 Job Discrimination (Age)

Date Filed: 07/23/2002
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Patrick D'Cunha

represented by **Patrick D'Cunha**
137-22 Laburnum Avenue
Flushing, NY 11355
718-661-2979
Email: dragondcunha@aol.com
PRO SE

V.

Defendant

Genovese/Eckerd Corporation

represented by **James Bucci**
Genova Burns & Vernola
2 Riverside Drive, Suite 502
Camden, NJ 08103
856-968-0680
Fax: 856-968-0685
Email: jbucci@gbvlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Shirin W. Saks
Genova, Burns & Vernola
354 Eisenhower Parkway
Eisenhower Plaza II
Livingston, NJ 07039
973-533-0777
Fax: 973-533-1112
Email: ssaks@gbvlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gregory S. Hyman
Spector Gadon & Rosen, P.C.
Seven Penn Center,

10/23/2007	<u>83</u>	RESPONSE in Opposition re <u>79</u> MOTION for Protective Order filed by Genovese/Eckerd Corporation. (Attachments: # <u>1</u>) (Saks, Shirin) (Entered: 10/23/2007)
10/23/2007	<u>84</u>	ORDER: Plaintiff's <u>79</u> request for a protective order is denied. The Court has already ordered plaintiff to supplement his discovery responses regarding his claim for damages. Defendant has also been granted permission to re-depose plaintiff regarding his employment and medical histories. Plaintiff is ordered to comply with the Court's Order and cooperate with defendant in scheduling his deposition and filing the joint pre-trial order by 12/15/2007. There is no basis for plaintiff's <u>80</u> request for sanctions. Accordingly, plaintiff's request for sanctions is denied. So Ordered. (Ordered by Judge Lois Bloom, on 10/23/2007) C/M. Motions <u>79</u> , <u>80</u> terminated. (Latka-Mucha, Wieslawa) (Entered: 10/24/2007)
10/24/2007	<u>85</u>	MOTION for Sanctions by Patrick D'Cunha. (Bucci, James) Additional attachment(s) added on 10/29/2007 (Latka-Mucha, Wieslawa). (Entered: 10/24/2007)
10/24/2007	<u>86</u>	RESPONSE in Opposition re <u>85</u> MOTION for Sanctions filed by Genovese/Eckerd Corporation. (Bucci, James) (Entered: 10/24/2007)
10/25/2007	<u>87</u>	ORDER endorsed on doc.# <u>85</u> : I write to assure Mr. D'Cunha that defendant's counsel's filing of plaintiff's motion papers electronically in no way harmed plaintiff and was performed as a courtesy. Plaintiff and defendant's counsel have to STOP writing these sniping letters to the Court. This letter will not help Mr. D'Cunha's case. His request for sanctions is DENIED. So Ordered. (Ordered by Judge Lois Bloom, on 10/25/2007) C/M. (Motion <u>85</u> terminated) (Latka-Mucha, Wieslawa) (Entered: 10/26/2007)
10/26/2007	<u>88</u>	Letter dated 10/26/2007 from pro se Patrick D'Cunha to Judge Bloom, in response to James Bucci, Esq.'s <u>86</u> opposition papers dated 10/24/2007. (Fwd. to Judge Bloom) (Latka-Mucha, Wieslawa) (Entered: 10/29/2007)
10/30/2007	<u>89</u>	ORDER endorsed on doc.# <u>88</u> : Plaintiff's request for a conference is DENIED as unnecessary. The parties' joint pre-trial order is due 12/15/07. So Ordered. (Ordered by Judge Lois Bloom, on 10/30/2007) C/M. (Latka-Mucha, Wieslawa) (Entered: 11/02/2007)
11/01/2007	<u>90</u>	Letter dated 10/31/2007 from pro se Patrick D'Cunha to Judge Bloom, requesting "not to allow the Defendants to move ahead with the Videotaped deposition of Mr. Colaizzi Jr." etc. W/Attachments. (Fwd. to Judge Bloom) (Latka-Mucha, Wieslawa) (Entered: 11/02/2007)
11/05/2007	<u>91</u>	Letter in opp to Plaintiff's 10/31/07 letter re videotaping of Colaizzi dep by Genovese/Eckerd Corporation (Saks, Shirin) (Entered: 11/05/2007)
11/06/2007	<u>92</u>	ORDER endorsed on doc.# <u>90</u> (2nd page): The application is denied. See Fed. R. Civ. P. 30(b)(2) ("The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the Court order otherwise, it may be by sound, sound and visual, or

Exh. "C"

From: James Bucci <jbucci@gbvlaw.com>

To: dragondcunha@aol.com

Subject: RE: D'CUNHA V. ECKERD, deposition of NYHQ physician and Walgreens Rule 30(b)(6)rep.; Plaintiff wants to be present.

Date: Wed, 10 Oct 2007 9:28 am

Mr. D'Cunha:

Concerning the depositions of physicians, in my experience their available time to be deposed is limited, and accommodations must be made for them, especially concerning the date, time and location of the deposition. I will keep you informed, and will send you all documents received in response to the subpoenas.

Jim Bucci

James Bucci, Esq.

Tel: 856 968-0686

Fax: 856 968-0685

From: dragondcunha@aol.com [mailto:dragondcunha@aol.com]

Sent: Wednesday, October 10, 2007 1:35 AM

To: James Bucci

Cc: DRAGONDCUNHA@aol.com

Subject: D'CUNHA V. ECKERD, deposition of NYHQ physician and Walgreens Rule 30(b)(6)rep.; Plaintiff wants to be present.

Dear Mr. Bucci:

As the court has granted your request, to Depose my treating Physician when I had the heart attack, and to depose Walgreens' Rule 30(b)(6) representative, I request that I want to be present during those depositions as is my right, as you will be collecting information about my health and about my former job. Please inform me about the said dates that are convenient to these individuals so that I can inform you which days would be convenient to both parties. Any location in Manhattan would be suitable for me. Additionally, I request that you send me copy of each of the subpoenaed document packets you receive from Walgreens (both, my employment records and my prescription profiles) and the documents you receive from New York Hospital Medical Center of Queens, (MY Medical Records).

Thank you for your cooperation. Have you checked the websites of other law firms lately, regarding news of this case and its prospects, I thought you might want to check it out.

Sincerely,

Patrick D'cunha

Email and AIM finally together. You've gotta check out free AOL Mail!

Notice

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Exh. "D"

Patrick F. D'Cunha

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PATRICK F. D'CUNHA,)
)
Plaintiff,)
)
vs.) No. 02-CV-4157
) (FB) (LB)
GENOVESE/ECKERD CORPORATION,)
)
Defendant.)
-----)

CONTINUED DEPOSITION OF PATRICK F. D'CUNHA
New York, New York
Thursday, November 29, 2007

Reported by:
Maria A. Bermudez
JOB NO. 199162

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1-800-944-9454

Plaintiff's Trial Exhibit. 42

Patrick F. D'Cunha

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1 well, including the interest on if I were to
2 get that salary. That money would be working
3 somewhere for me, including a bank or some
4 financial investment, maybe investment in
5 another house or something like that. So,
6 that interest or appreciation of that
7 investment is also a loss to me, sir.

8 Q. Any other financial damages other
9 than those?

10 A. As I said, I don't have it off the
11 top of my head, but whatever other additional
12 benefits that Eckerd offered at that time for
13 the position, those.

14 THE WITNESS: Can I just --

15 MR. BUCCI: Go ahead, sir.

16 THE WITNESS: I would like to -- I
17 think I had earlier requested it. If
18 not, can I still request -- and I think
19 it would help the process of the
20 trial -- to please produce the salary at
21 Eckerd's, nothing else, on Ms. Babeu,
22 because that's the only person who was
23 hired where I was refused, including her
24 present salary and her initial salary
25 when she was hired in 2002. That would

1 A. Okay, sir. Sorry about that.

2 MR. BUCCI: Can you just read back
3 the question, please.
4 (Record read.)

5 A. Yes, sir.

6 Q. Can you explain what they are,
7 please?

8 A. Okay. Beginning with -- let's take
9 the experience of heart attack I had. I was
10 rejected in July -- I think it was the last
11 week of July 2003 -- by -- for the third time
12 by Eckerd Corporation. Already the first two
13 rejections had given me a sense of
14 hopelessness, kind of a deep, deep sense of
15 loss of dignity and all that, and there was
16 that accumulated stacked up stress. To add
17 to that, when this thing happened, I was not
18 conscious, but I am very sure I was very much
19 aware of what had happened, and I used to be
20 so much -- I used to be so much bitter. I
21 couldn't face my children. I couldn't face
22 my children. I couldn't go out to relatives,
23 friends. I even tried to hide things from
24 those who knew, including trying to say yes.
25 I'm working somewhere else. It was so

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1 help the calculation of any back wages.

2 Can you please do that --

3 MR. BUCCI: Sir, this isn't the
4 time for that, but if you want to send
5 me a letter, I'll review it at that time
6 and get back to you --

7 THE WITNESS: Could you please do
8 that?

9 MR. BUCCI: Put it --

10 THE WITNESS: Can I also state it
11 here?

12 MR. BUCCI: You stated it here, but
13 if you send me a letter --

14 THE WITNESS: Yes, but I would
15 also --

16 MR. BUCCI: I understand you just
17 did it here, but I'm saying I can't
18 respond until you send it to me in
19 writing.

20 THE WITNESS: Yes, I understand.

21 Q. Is it your claim that beyond your
22 initial date of when you were deposed in
23 March of 2003, that you experienced any
24 nonmonetary losses, such as emotional
25 distress or any other loss of that nature?

1 shameful, so humiliating.

2 Ultimately, in 2003, September, I
3 believe, 14th of September, when I was
4 reading a small prayer booklet, I had this
5 heavy squeezing in my heart, a severe kind of
6 heaviness in my chest, and I knew from what I
7 knew from my studies as a pharmacist that I
8 was experiencing a heart attack. I was
9 shaken.

10 My wife was at home because she
11 works -- also, she used to work at night, and
12 my first reaction was not to tell her because
13 she will get scared, because I know she'll be
14 terribly scared if she heard something like
15 this; but, again, I thought if I didn't tell
16 her and suppose something happens to me,
17 which is what I thought was happening, that
18 would be even worse. So, I slowly signaled
19 to my wife, called her and I told her -- I
20 told her don't -- I said don't be scared, but
21 I'm just having -- I'm experiencing this.
22 So, I just held her hand, and then we called
23 the 911.

24 While they were still on their way,
25 I experienced it for one more time, the same

47 (Pages 520 to 523)

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Patrick F. D'Cunha

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1 Here's the question. I'll state it
2 again. Do you recall when it was that you
3 were taken to the hospital?

4 A. I believe it was on or about
5 September 14, 2003, but --

6 Q. Were you diagnosed with anything?
7 Were you given a diagnosis?

8 A. I don't know. I have to see all
9 those records, sir. I know one thing, that
10 when I was taken by the ambulance to the
11 hospital, I was first given nitroglycerin
12 sublingual. That's a medication that helps
13 breathe for the person. It's normally given
14 to people who have heart attack. I was also
15 later administered heparin IV. I was also
16 given additional other medications, like
17 Lipitor and Metoprolol, that are usually
18 given to people who are --

19 Q. Sir, what is it that you're
20 claiming was the reason that you had this
21 condition or these pains?

22 A. Considering the fact that I had
23 practically no risk factors, neither in my
24 lifestyle, nor in my past history, I
25 definitely believed it was chronic stress,

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1 and mainly the chronic stress from not one,
2 not two, but three rejections by Eckerd
3 Corporation, despite the fact that I was
4 qualified, despite the fact that they had
5 positions. That is the reason I had this
6 experience of heart attack.

7 There are studies -- I have bundles
8 of them, and these are authoritative studies
9 from both American Psychological Association,
10 the Web med, and Medline and all, which I'm
11 going to request to the judge, the trial
12 judge, to accept -- to make a judicial --
13 take judicial notice of, which I'm going to
14 introduce as authoritative studies, which
15 show that chronic stress and heart attack --
16 there is a clear link.

17 In fact, as recently as September
18 of 2007, there is a big article, which I
19 bought online just two nights ago, for \$30,
20 which clearly states the connection between
21 chronic stress and heart -- risks of heart
22 attacks.

23 Q. Is it your contention that you've
24 had chronic stress, sir?

25 A. It is because of the Eckerd

1 rejections, sir. Yes, sir.

2 Q. So, you're saying this chronic
3 stress started when?

4 A. First of all, I want to clarify.
5 Chronic stress is not something that started
6 from that, meaning I had stress and it is
7 called chronic because it has been there for
8 a longer duration and that's what --

9 Q. When did this stress start, sir?

10 A. After on or about the first
11 rejection by Eckerd Corporation, August of
12 2001, and -- but I became aware of it a
13 little later, and probably lot more conscious
14 of it -- I became more conscious of it after
15 my second rejection in February 2002, because
16 between August and February I still had hope
17 because I wanted to try again with the higher
18 authorities of Eckerd Corporation. That's
19 why I contacted Ms. Dolan, and I asked her,
20 and I pressed on it and, therefore, they
21 called me for the second interview. But
22 after second interview, the second rejection
23 really gave me -- it was like a big shocking
24 experience and that's when that really
25 started setting in me, the so-called chronic

1 stress. It became even worse after the third
2 rejection by Eckerd Corporation for similar
3 reasons -- for same reasons.

4 Q. Did you ever have any history of
5 heart attacks in your family?

6 A. I think they produced something
7 from the hospital saying that my dad died of
8 heart attack. I don't know if I said that,
9 but there is no evidence whatsoever, no
10 documentary evidence that my dad died of
11 heart attack, so -- period. It is true my
12 dad died suddenly, but it may have been brain
13 hemorrhage. It's not necessarily heart
14 attack.

15 Secondly, my dad died at the age of
16 69. That's pretty old. So, old age itself
17 is good enough reason for him to have died at
18 that age, 69. In India, at that time, to
19 have lived 69 years with those conditions,
20 was pretty good.

21 Q. Did you tell --

22 A. My mother died at the age of 74.
23 My two brothers, who are presently living,
24 one is 75 and the other one is 73, I believe,
25 and my one sister is 71 probably. So, people

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Patrick F. D'Cunha

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1 echocardiogram was okay, I wouldn't need any
2 stress test. But I believe it is clear
3 echocardiogram was not okay; therefore, I was
4 put in for this stress test.

5 During that time, after this
6 echocardiogram, I didn't get chance to meet
7 Dr. Arora because after that he had left the
8 clinic. So, during the stress test, which
9 Dr. Arora himself performed, he told me -- I
10 mean, these are his words, "We don't have a
11 problem and it's not completely okay either,"
12 meaning there is some problem. I asked him
13 what, and then he said when I do kind of
14 severe exercise, then the peripheral -- the
15 ending part of my heart is not able to get
16 enough oxygen and blood supply. He said if
17 you go on like this, I'll put you on these
18 medications; if there is a problem or if you
19 do have any chest pain, then we could
20 consider surgery.

21 Q. So, is this the first time any
22 physician has identified or attempted to
23 diagnose you with a problem with your heart?

24 A. I believe, yes, and I believe it
25 would have been earlier if my previous

1 A. Stressful events in the sense I do
2 continuously keep getting, which I stated
3 earlier, a kind of severe pain at the back of
4 my head and my neck, and which I did once --
5 I don't know if it's a neurologist -- I don't
6 know. I have never brought it up with a
7 physician, but I keep doing everything else I
8 could to kind of reduce it.

9 I've learned that there are certain
10 stress-reducing exercises and there are
11 certain other things, which I keep doing,
12 including yoga, which they say helps, and I
13 keep doing that.

14 No serious events, stressful
15 events, other than that heart attack, but
16 once in a while I do get little pain in my
17 head and the chest once in a while, but I
18 have -- my doctor presently is on vacation,
19 and I think he will come probably sometime
20 end of December. That time he has scheduled
21 another visit for me to check my blood levels
22 because he wants to see if my present
23 medications are working or not; otherwise, he
24 may have to adjust the therapy.

25 Q. Sir, did you suffer any stress as a

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1 physician, whom I had asked to take all these
2 detailed tests, which he failed to do.
3 That's another reason why I switched from
4 him, because he was not doing --

5 Q. And by this, I'm referring to the
6 2007 by Dr. Arora, November 2007.

7 A. Yes, sir.

8 Q. Have you ever smoked cigarettes in
9 your life, sir?

10 A. Never did.

11 Q. How about alcohol? You ever drink
12 alcohol?

13 A. My drinking is like a -- you could
14 say like a mini baby type, once in maybe
15 sometimes several months. So, as a rule, you
16 could say no.

17 Q. From the date of when you went into
18 the hospital -- you said it was in the fall
19 of '03 -- have you had any other stressful
20 events in your life since that time?

21 A. Since when again?

22 Q. Since September of 2003, when you
23 went to the hospital. Since that date, have
24 you had any other stressful events in your
25 life?

1 result of or in connection with your
2 employment and the separation of your
3 employment from Walgreens in 2005?

4 A. There may have been certain amount,
5 but I believe -- there may have been a
6 certain amount, but I still look back at it
7 as probably who knows. They were also trying
8 to -- as I said, retaliation is not only for
9 what I complained about John Colaizzi, but
10 also their knowledge of the fact that I had
11 sued Eckerd Corporation. So, corporations
12 are afraid that somebody is going to sue them
13 again. So, probably retaliation --

14 Q. So, did you suffer stress as a
15 result of your employment and the separation
16 of your employment from Walgreens?

17 A. Maybe some additional stress, yes.

18 Q. How would you compare that stress
19 to the stress that you claim you suffered
20 from Eckerd? How would you compare --

21 A. I may have felt less stress with
22 Walgreens, probably because there is certain
23 human elements which looks at the fact that
24 this is a company which at least gave me some
25 chance, if not total full chance, at an

52 (Pages 540 to 543)

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4252

Patrick F. D'Cunha

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1 opportunity to have that employment and on my
2 living and provide for my family, at least
3 something. They did something, which Eckerd
4 did nothing, not once, not twice, but three
5 times.

6 Q. Have you suffered any other
7 nonmonetary damages, other than what you've
8 already explained to me?

9 A. Yes. Like what I stated in my --
10 in the answers to the additional
11 interrogatories that you sent me. The loss
12 of peace of mind is a big thing to lose. The
13 sense of deep, deep humiliation and loss of
14 dignity is a huge thing to happen to a human
15 being. The loss of the quality of life as an
16 ordinary human being -- because you can't
17 enjoy the regular pleasures of life which
18 every human being should have, go out on a
19 walk with your wife, with your children, with
20 your family, go and enjoy movies. Even now I
21 cannot -- finally this time I have agreed --
22 I told my kids -- I promised them for
23 Christmas vacation, at least one day, I will
24 go out with them, enjoy an outside meal and
25 watch movies. I have agreed to that, despite

1 with whatever we could save, we did try to
2 renovate my house in smaller steps.
3 Recently, I just got an approval and a
4 loan -- I took additional home equity loan in
5 order to finance my daughter's -- my oldest
6 daughter, who is first year pharm-B student
7 at Long Island University, Brooklyn campus,
8 and since her expenses annually is like
9 35,000 plus, \$35,000, maybe more. My second
10 daughter is due to join her next year. So,
11 in order to have some financial backing, I
12 took this \$30,000 loan, home equity loan, my
13 second home equity loan, as some safety
14 measure so that we don't have serious
15 problems trying to finance this thing, and
16 hoping that, you know, things will kind of
17 improve from there on.

18 Q. Sir, since March of 2003, when you
19 were last deposed, have you ever considered
20 going into a different line of work in order
21 to obtain employment?

22 A. I never did, sir, because I
23 personally think, looking at the ads on the
24 computer and so on, it was -- I mean, this
25 is -- there could be no better time for

545

547

1 the fact that my inside feels so useless,
2 feels so lacking in dignity that was deprived
3 to me by Eckerd Corporation.

4 Q. Sir, were you in the hospital in
5 the summer of 2006 for -- you had a nail in
6 your foot; is that right?

7 A. I think, yes, maybe some nail -- I
8 think I was doing some work in the basement
9 and some nail hurt me in my foot.

10 Q. What construction work have you
11 done in your house since you bought it? You
12 were doing work in the summer of '06. What
13 was the work that you were doing then?

14 A. I don't see any relevance of that,
15 sir.

16 Q. It's just --

17 A. No, I don't see -- there's no
18 relevance to that.

19 Q. Has your family invested money into
20 the house since you bought it?

21 A. We took -- in fact, as a matter of
22 fact, I -- yes, that way we did try to kind
23 of upgrade my house like -- yes, we did some
24 little minor things, not too much at a time
25 because we couldn't afford the money. So,

1 opportunities for pharmacists to get a job
2 than now, now and probably next decade,
3 because there is maximum demand for
4 pharmacists.

5 I know what these corporations are
6 doing. Right now, of course, they are
7 probably reacting to what happened, the
8 so-called -- the look of my resume, which
9 shows big gap, again, after working for
10 Walgreens just for about four months. So,
11 probably they are reacting to that.

12 Other than that, I know the
13 pharmacists, when they work -- and even
14 recently I joined the pharmacists for a
15 continuous education credit, which was
16 sponsored by Walgreens, and I joined that,
17 and what I find the issues, present-day
18 issues pharmacists are facing, I was at
19 level, if not better, than those pharmacists
20 who are working. We discussed several
21 issues, and I still feel -- I can't believe
22 that these corporations don't -- I mean, they
23 refuse people like me just because I'm old,
24 and I'm sure there is nothing else to that.

25 Q. Sir, so given the abundance of jobs

53 (Pages 544 to 547)

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Patrick F. D'Cunha

564

1

document I have requested, first

2

Dr. Epstein, your medical expert.

3

Additionally, I'm also making oral

4

request for your second transportation

5

expert about which I will shortly --

6

MR. BUCCI: We've given you that

7

information. You've asked for his name

8

and we've given it to you.

9

THE WITNESS: I'll send you the

10

request officially, sir.

11

Once again, thank you very much for

12

all the documents you have produced.

13

Thank you. That's it.

14

MR. BUCCI: So, we're all done.

15

(Time noted: 3:28 p.m.)

16

17

18

PATRICK F. D'CUNHA

19

20

Subscribed and sworn to before me

21

this day of , 2007.

22

23

24

25

566

1

----- I N D E X -----

2

WITNESS EXAMINATION BY

3

PATRICK F. D'CUNHA MR. BUCCI

4

5

----- EXHIBITS -----

6

DEFENDANT'S FOR ID.

7

20 2002 federal tax return 346

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21 2003 state tax return 348

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22 Plaintiff's supplemental 365

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affidavit

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23 Letter, 7/21/2003 385

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24 Plaintiff's supplemental 387

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26 2004 federal tax return 423

18

27 EEOC dismissal and 444

19

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28 Document, 451

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Bates No. WAL-ER 003

22

29 Letter, 6/7/2005 455

23

30 Pay stub 457

24

31 Two-page supervision 459

25

visit notes

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1

CERTIFICATE

2

STATE OF NEW YORK)

3

: ss.

4

COUNTY OF BRONX)

5

6

I, MARIA A. BERMUDEZ, a Notary

7

Public within and for the State of New

8

York, do hereby certify:

9

That PATRICK F. D'CUNHA, the

10

witness whose deposition is hereinbefore

11

set forth, was duly sworn by me and that

12

such deposition is a true record of the

13

testimony given by the witness.

14

I further certify that I am not

15

related to any of the parties to this

16

action by blood or marriage, and that I

17

am in no way interested in the outcome

18

of this matter.

19

IN WITNESS WHEREOF, I have hereunto

20

set my hand this day of ,

21

2007.

22

23

24

MARIA A. BERMUDEZ

25

567

1

DEFENDANT'S FOR ID

2

32 Collection of e-mails 462

3

33 Letter, 8/15/2005 484

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34 Eight-page letter, 485

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8/16/2005

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35 Two-page letter, 486

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8/29/2005

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36 Letter, 9/6/2005 488

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37 Two-page letter, 9/6/2005 490

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38 Disciplinary record 491

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39 Two-page handwritten 492

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letter, 10/11/2005

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40 Letter, 10/26/2005 493

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41 Three-page letter, 494

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10/25/2005

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42 2005 federal tax return 496

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43 W-2s 498

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44 Pharmacist and pharmacy 499

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technician job board and

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pharmacy career site

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printout

22

45 Pharmacist and pharmacy 500

23

technician job board and

24

pharmacy career site

25

printout

58 (Pages 564 to 567)

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GENOVA, BURNS & VERNIOIA

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 MEMBER OF NEW YORK BAR +
 MEMBER OF PENNSYLVANIA BAR +
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 CERTIFIED CIVIL TRIAL ATTORNEY ◊

December 12, 2007

BY ELECTRONIC FILING

Honorable Lois Bloom
 United States District Court
 for the Eastern District of New York
 225 Cadman Plaza East
 Brooklyn, New York 11201

Re: Patrick F. D'Cunha v. Eckerd Corporation
Civil Action No. 02-CV-4157

Dear Magistrate Judge Bloom:

This firm represents Defendants, Genovese/Eckerd Corporation ("Defendants"), in the above-entitled action. Defendants and Plaintiff *Pro Se*, Patrick F. D'Cunha, jointly submit this correspondence respectfully seeking an extension of time to submit the Joint Pre-Trial Order in this action, currently due to be filed by December 15, 2007, in order for both parties to complete expert discovery and to allow Plaintiff additional time to prepare his objections to be included in the Joint Pre-Trial Order. Accordingly, the Parties respectfully seek a brief extension of time to submit the Joint Pre-Trial Order so that both parties may accomplish these goals.

Both Defendants and Plaintiff have been working diligently to conclude the additional discovery allowed by Your Honor, in your Order of October 4, 2007, and to prepare the Joint Pre-Trial Order. Defendants took the deposition of Plaintiff's subsequent employer's representative and held a continued deposition of Plaintiff. In addition, Defendants served three subpoenas, on Walgreens Corporation, Walgreens Pharmacy and the New York Hospital Medical Center of Queens ("NYHMCQ"), and obtained the production of additional relevant documents. At this juncture, the parties have otherwise completed the Joint Pre-Trial Order

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ATTORNEYS-AT-LAW

Honorable Lois Bloom
December 12, 2007
Page 2

with the exception of exhibits relating to Defendants' experts and Plaintiff's evidentiary objections.

However, Defendants' ability to provide their cardiology expert with relevant documents, including Plaintiff's medical records and a transcript of his continued deposition, was delayed until Defendants received the relevant documents, pursuant to its subpoenas, and held the continued deposition of the Plaintiff. To this end, Defendants served a medical records subpoena on the NYHMCQ on September 24, 2007, but the NYHMCQ did not provide responsive documents to Defendants until approximately November 6, 2007. Additionally, the parties were unable to arrange Plaintiff's deposition until November 29, 2007.

After deposing Plaintiff, Defendants forwarded relevant material to their cardiology expert but then learned, on December 7, 2007, that the expert was leaving for vacation that day and not expected to return until after the new year. Hence, Defendants will not be able to provide Plaintiff with their cardiology expert's report until early January 2008. Plaintiff submits that he needs additional time to review Defendants' expert disclosures and to take the depositions of Defendants' experts. In addition, an issue has arisen with respect to the authentication of Plaintiff's medical records, and Plaintiff intends to depose the records' custodian. Finally, Defendants sent a draft of the Joint Pre-Trial Order to Plaintiff, but Plaintiff requests additional time to prepare his objections to Defendants' exhibits, witnesses and deposition designations contained in the Joint Pre-Trial Order.

Finally, it is Defendants' understanding that no judge has yet been assigned to this matter. Thus, any extension of time should work no inconvenience to the Court's calendar. Accordingly, Defendants and Plaintiff jointly respectfully request this Court to extend the date on which Defendants are to file the Joint Pre-Trial Order in this action to January 31, 2008 in order to allow the parties to complete expert discovery, to allow Plaintiff to take Defendants' experts' depositions and to allow Plaintiff additional time to assert his objections to the Joint Pre-Trial Order.

Respectfully submitted,

GENOVA, BURNS & VERNIOIA



Shirin Saks

c: Patrick F. D'Cunha (via U.S. mail and e-mail)
James Bucci, Esq.

2002\002\Letter\Ltr to Judge Bloom 121207-2.doc

October 1, 2009

BY REGULAR & ELECTRONIC MAIL

Mr. Patrick F. D'Cunha
137-22 Laburnum Avenue
Flushing, NY 11355

Re: Patrick F. D'Cunha v. Eckerd Corporation, et al.
Civil Action No. 02-CV-4157

Dear Mr. D'Cunha:

Defendants, Eckerd Corporation, The Jean Coutu Group (PJC), Inc., The Jean Coutu Group (PJC) U.S.A., Inc. and Rite Aid Corporation (collectively, "Defendants"), are in receipt of your e-mail correspondence, dated September 21, 2009, in which you state that you will not participate in any further discovery in this matter until, at a minimum, Defendants' motion to dismiss is resolved by the Court. However, notwithstanding your objection, because trial in this matter is scheduled for December 7, 2009 and Defendants must accordingly protect their rights, Defendants intend to move ahead with discovery.

By Defendants' correspondence of September 21, 2009, Defendants requested that you provide (1) date(s) for your deposition; (2) date(s) for the depositions of witnesses you have identified as having knowledge of your emotional distress (Agnes D'Cunha, Olivia D'Cunha, Crystal D'Cunha and Stacy D'Cunha); and (3) date(s) you will make yourself available to undergo independent medical examinations with Defendants' medical expert, Dr. Stanley Epstein, and a psychological expert Defendants intend to retain. In addition, Defendants asked you to execute a HIPAA release form directed to your treating physician, Dr. Jodh Arora, and to identify any other medical providers you have consulted.

This is Defendants' second request for the aforementioned information. Accordingly, enclosed please find a Notice of Deposition, seeking your deposition on October 22, 2009,

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Mr. Patrick F. D'Cunha

October 1, 2009

Page 2

commencing at 10:30 a.m. at the offices of Genova, Burns & Vernioia, located at 494 Broad Street, Newark, N.J. 07102. In addition, pursuant to Rule 45(b)(1) of the Federal Rules of Civil Procedure, enclosed is a draft of the subpoena Defendants intend to serve upon Dr. Arora, drafts of deposition subpoenas Defendants intend to serve on Agnes D'Cunha, Olivia D'Cunha, Crystal D'Cunha and Stacy D'Cunha and another copy of the HIPAA release form to Dr. Arora, which Defendants expect you to execute and return as soon as possible. If Olivia D'Cunha, Crystal D'Cunha and Stacy D'Cunha no longer reside at your address, please provide Defendants with their last known address[es]. Please let us know if they and your wife are agreeable to accepting service of the subpoenas via mail to you, or whether they require personal service.

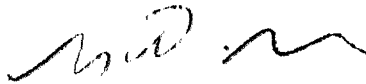
Finally, we will provide you with dates for your independent medical examinations. If there are any dates in October when you are not available, please let me know immediately.

In the event you maintain your objection to participating in discovery in this matter, Defendants may seek the Court's intervention by way of a motion to compel discovery. If we do not receive the signed HIPAA authorization from you by Thursday, October 8th, we will be forced to file a motion.

Thank you for your attention to this matter.

Very truly yours,

GENOVA, BURNS & VERNIOIA



Shirin W. Saks

SWS:ga

Enclosures

c: John McNamara, Esq.
James Bucci, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
PATRICK F. D'CUNHA,

Plaintiff,

v.

CIVIL ACTION NO.:
02-CV-4157(FB)(LB)

NOTICE OF DEPOSITION

ECKERD CORPORATION, and its parent :
Companies: Brooks Eckerd drugstore chain, :
J.C. Penney, JCG (PJC) USA, LLC ("Jean Coutu :
USA"), Jean Coutu Group (PJC) Inc. and Rite Aid :
Corporation (publicly held corporations), :
Defendants. :

-----X

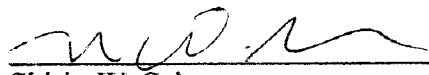
Pursuant to Rule 30 of the Federal Rules of Civil Procedure, Defendants will take the deposition upon oral and video examination of Patrick F. D'Cunha, 137-22 Laburnum Avenue, Flushing, NY 11355, in connection with the above-captioned case, at the offices of Genova, Burns & Vernoia, 494 Broad Street, Newark, New Jersey, on Thursday, October 22, 2009, at 10:30 a.m.

Dated: Newark, New Jersey
October 1, 2009

GENOVA, BURNS & VERNIOIA

Attorneys for Defendants,
Eckerd Corporation, The Jean Coutu Group (PJC), Inc.,
The Jean Coutu Group (PJC) U.S.A., Inc. and Rite Aid
Corporation

By:


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